

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3635 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOHAMADALI IMAMALI KAZI

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:

MR BG JANI for the Petitioner

MR SM MAZGAONKAR for the Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/08/96

ORAL JUDGEMENT

1. The petitioner, a driver of the Gujarat State Road Transport Corporation, filed this Special Civil Application before this Court in the matter of Departmental proceedings and the penalty given to him. On 7-7-1977 the petitioner was driving the bus of the Corporation No.GTK 5496 from Ahmedabad to Modasa. As a result of his negligent driving the conductor of the bus was seriously injured and he was taken to the Hospital

where he succumbed to death. In connection with this act of the petitioner, the police has registered a case and challan has been filed in the court of J.M.F.C. Prantij. The petitioner for this act of negligence was served with the chargesheet dated 1-8-1977. The charge against the petitioner was that while reversing the bus he was negligent, which resulted in the death of the conductor of the bus. The inquiry was held against the petitioner wherein the charge was found to be proved. The show cause notice was given to the petitioner in which the penalty of dismissal was proposed. After considering the reply to the show-cause notice, the disciplinary authority has decided to give the penalty of dismissal to him under its order dated 11-7-1979. The petitioner filed an appeal against this order, but the same has been dismissed. He has taken up this matter in the second appeal which was partly allowed and the petitioner was ordered to be reinstated back in the service, but his pay was ordered to be reduced. The petitioner has also taken the matter to the Industrial Tribunal, but that has also been dismissed. Hence, this Special Civil Application before this Court.

2. The reply to the Special Civil Application has been filed by the respondent.

3. The learned counsel for the petitioner made two fold submissions. Firstly it is contended that in the criminal case, the petitioner has been acquitted, and as such there was no question of punishing the petitioner of the same charges in the departmental proceedings. In support of this contention, the learned counsel for the petitioner places reliance on the decision of the Supreme Court in the case of Corporation of the City of Nagpur Civil Lines, Nagpur & Anr. vs. Ramchandra G. Modak reported in AIR 1984 SC Page 626, in the case of N.S. Nair v. The Commissioner of Police, reported in 23 GLT 375, in the case of Chandrasinh Rupsinh V. State of Gujarat & Others reported in 18 GLT 421, in the case of Gujarat State Road Transport Corpn. vs. Rupsinh Veghaji Rathod reported in 1985 GLH (NOC) 9 and in the case of T. Vijayakumar v. State of A.P. reported in 1978 LIC 15. It has next been contended that the penalty of reduction of the pay is highly harsh and excessive.

4. On the other hand, learned counsel for the respondent has contended that it is a case in which a lenient view has been taken by the department in the appeal otherwise, dismissal was the appropriate punishment to be given to the petitioner. It has next been contended that there is no bar that the Corporation

could not have proceeded against the petitioner in a departmental proceeding for his act of negligence which resulted in the loss of life of the conductor. In support of his contention, the learned counsel for the respondent places reliance on the decision of the Supreme Court in the case of Nelson Motis v. Union of India & Anr. reported in JT 1992(5) SC 511. Replying to the contention of the learned counsel for the petitioner that the penalty is harsh or excessive, the counsel for the respondent contended that this court has no judicial power of review in the matter of quantum of penalty to be given to a delinquent employee for a proved misconduct. Only where this court considers that the penalty which has been given to the delinquent employee is shocking to the judicious conscience of this court, then only in such case the court may interfere with the penalty and not otherwise. In support of his contention, the learned counsel for the petitioner has placed reliance on the decision of the Supreme Court in the case of State Bank of India vs. Samendra Kishore reported in JT 1994 (1) SC 217 and B.C. Chaturvedi vs. Union of India reported in JT 1995(8) SC 65.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. It is not in dispute that the petitioner has been acquitted in the criminal case which has been registered against him in connection with the causing of death of the conductor of the bus by his negligent driving. The learned counsel for the petitioner though cited many of the decisions of the Supreme Court and of this Court, but I do not find in any of the case where the court has held that in no case the department should have proceeded against a delinquent departmentally in connection with somewhat identical charges which was the subject matter of the trial in a criminal case. In the case of Corporation City of Nagpur vs. Ramchandra (supra) the Supreme Court has held that the question whether or not the departmental inquiry pending against the employee involved in a criminal case should be continued even after his acquittal in the criminal case is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where accused is acquitted honourably and completely exonerated of the charges, it is not expedient to continue the departmental inquiry on the very same charges or grounds or the evidence. However merely because accused is acquitted power of the authority concerned to continue departmental inquiry is not taken away nor its discretion in any manner fettered. So there is nothing to be read in this decision as the

counsel for the petitioner contended that no inquiry could have been proceeded against the petitioner. On the reading of this decision of the Supreme Court on the other hand, it is clearly borne out that it is permissible to the departmental authorities to proceed departmentally on the very same charges after the acquittal of the petitioner. The Supreme Court has clearly given out that merely on acquittal of the delinquent employee in the criminal case, the power of authority concerned to continue departmental inquiry is not taken away nor its discretion in any manner fettered.

6. In the case of Nelson Motis vs. Union of India (supra) the Supreme Court has considered the case where the disciplinary proceedings could have been continued after the acquittal of the delinquent in the criminal case. The Supreme Court held that "whether the disciplinary proceeding could have been continued in the face of the acquittal of the appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and the scope of a criminal case are very different from those of a disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding."

7. In the case of Kusheshwar Dubey Vs. Bharat Coking Coal & Anr. reported in 1988 (4) SC 319, the Supreme Court has held that "while there can be no bar for simultaneous proceedings being taken yet there may be cases where it would be appropriate to defer disciplinary proceedings awaiting the disposal of the criminal case. In the latter class of the cases it would be open to the delinquent employee to seek such an order of stay or injunction from the court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending the criminal trial. The court has further held that it is neither possible nor advisable to evolve a hard and fast, strait-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation." In that case before the Supreme Court, the criminal action and the disciplinary proceedings were accepted to be grounded upon the same set of facts, and as such, it is considered appropriate for staying of the disciplinary proceedings. Where the disciplinary proceedings and the criminal proceedings are grounded upon the same set of facts then in that case the disciplinary proceedings were advisable

to be stayed, but there is no ratio that after the acquittal in the criminal case, those proceedings cannot be proceeded. In the aforesaid case, the Court has said that there are also authorities in support of the position that there is nothing wrong in parallel proceedings being taken - one by way of disciplinary proceedings and the other in the criminal court. A reference in this respect has been given to the earlier decision of the Apex court in the case of Jang Bahadur Singh v. Baij Nath Tiwari. The standard of proof in the criminal case and in the disciplinary proceedings differs. In the criminal case, the guilt of the delinquent employee has to be proved beyond reasonable doubt, but in the disciplinary proceedings that standard of proof is not required. The disciplinary proceeding is not a criminal trial, and as such, the standard of proof of the charges framed against the delinquent employee is that of preponderance and probability. A reference in this respect may have to the decision of the Supreme Court in the case of Union of India Vs. Sardar Bahadur reported in 1972(2) SCR 218. There are catena of authorities of the apex court that it is permissible to proceed simultaneously against the delinquent employee departmentally by way of departmental proceedings as well as in the criminal proceedings, and on acquittal of the delinquent employee in the criminal proceedings, there is no question of his total exoneration of the charges in the disciplinary proceedings.

8. The first contention raised by the learned counsel for the petitioner, in view of this fact and law as stand, is not acceptable. Now I may refer to the contention of the learned counsel for the petitioner that the penalty which has been given to the petitioner is harsh or excessive. In the case of State Bank of India vs. Samendrakishore (supra), the apex court has held that what appropriate penalty should be given to a delinquent for a proved misconduct is exclusively in the domain and area of consideration of the disciplinary authority and not for the court or the Tribunal. The court has held that in the matter of what penalty should be given for a proved misconduct this court has no judicial power of review. But in the case of B.C. Chaturvedi Vs. Union of India, the apex court has held that "a review of the legal position would establish that the disciplinary authority, and on appeal the appellate authority being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High

Court/Tribunal while exercising the power of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief either directing the disciplinary/appellate authority to reconsider the penalty imposed or to shorten the litigation it may itself in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof." So in view of the decision of the Supreme Court in the case of B.C. Chaturvedi Vs. Union of India (supra) this court may go and apply of its judicial mind to the question of proportionality for the punishment of the penalty, but then while seized with this question as a High court interference is permissible only when the punishment or the penalty is shockingly disproportionate to the guilt. Judicial review as is known is not an appeal but a review of the manner in which the decision is made. So on the question of disproportionate or the punishment of the penalty, this Court will not sit as an appellate authority above the decision of the lower authorities. The arena of consideration is on the question whether the penalty is shockingly disproportionate or shocks the conscience of the court. Keeping in view this limitation, the contention made by the learned counsel for the petitioner has to be considered. The delinquent employee, petitioner herein, was chargesheeted with the serious charges of negligent driving resulting and causing death of the employee of the Corporation, the conductor of that very bus. The disciplinary authority has given the penalty of dismissal to the petitioner. The appellate authority has the appeal powers and it can sit as an appellate Court and and it has to sit as an appellate court above the decision of the disciplinary authority. The appellate authority in the present case has taken a lenient view in the matter of punishment of the penalty to be given to the petitioner for a proved mis conduct and the penalty of dismissal was substituted by the penalty of reduction in the pay scale. So present is a case where the appellate authority has gone into this question and the penalty has been reduced. The question is whether the penalty which has been given by the appellate authority is shockingly disproportionate to the guilt for which the petitioner was chargesheeted or shocks the judicial conscience of this Court, taking into consideration the fact that the negligence of the petitioner has been proved in driving of the vehicle, and as a result the conductor of the bus died, it cannot be said that the penalty given by the appellate authority is

shockingly disproportionate or it shocks the judicial conscience of this court. It is not a case where any interference of this court is called for on the question of proportionality of the punishment.

9. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. The petitioner is directed to pay Rs.1000/- to the Corporation by way of costs of this writ petition. The Corporation is directed to recover the costs from the salary of the petitioner in the instalment of Rs.100/- per month.

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